

law schools have stepped in to fill the gap, all circuit courts should have official sites providing the public with free access to court opinions. If five can do it, why can't the rest?"¹⁸⁰

Principle 4 states that the government should exercise caution in adding specialized value to public data and information. For example, Lexis-Nexis provides linked access to academic and other non-governmental information regarding legal cases. While the government should provide on-line access to the court decisions themselves, the argument for providing such extensive value-added enhancement seems more dubious. To do so may go beyond the government's role in providing basic public information.

The bottom line is thus that the government should provide more information and improve the search capabilities, especially with regard to legal decisions, on its web sites. Some of this additional information would duplicate information currently available through Lexis-Nexis. That duplication does not justify failing to post the information on official web sites – especially if the goal is to promote public understanding and access to information, since Lexis-Nexis charges fees for access to its service. At the same time, however, parts of the Lexis-Nexis service – such as the linkages to relevant journal articles and the searchable news databases – should probably not be provided by the government, because they represent significant value-added that could be more efficiently provided by the private sector.

¹⁸⁰ See <http://www.cdt.org>.

Case Study: On-Line Tax Preparation Software

During the 1998 tax year, 400,000 people filed their taxes on-line. Forrester Research estimated that this number increased to 1.25 million (still only one percent of all returns filed) for the 1999 tax year.¹⁸¹

On-line tax preparation is neither necessary nor sufficient for “electronic filing.” Electronic filing is the act of electronically transmitting a completed return, and therefore includes returns that are prepared off-line and then submitted electronically to the Internal Revenue Service (e.g., the return is prepared with a commercial software package on a desktop computer and then transmitted to the IRS). On-line tax preparation covers only those returns that are actually prepared through the World Web Wide (i.e., the return is filled out through a web browser without the downloading of any software). Note that on-line tax preparation need not imply on-line tax *filing*; many customers choose to prepare their tax returns on-line, and then print them out and mail them to the IRS.

The purpose of this case study is to explore what the government, and particularly the IRS, should and should not be doing in the area of on-line tax preparation. The issue is particularly important because on-line tax preparation is expected to grow rapidly. Indeed, one (admittedly somewhat controversial) estimate suggests that by 2003, more tax returns will be prepared using on-line services than the number prepared using traditional software packages.¹⁸²

¹⁸¹ *Business Week*, April 17, 2000, page 200.

¹⁸² Mike Hogan, “Tax Time Arrives: Tax,” *PC World*, January 13, 2000.

Industry profile

Intuit and H&R Block operate the two largest on-line tax preparation sites. Intuit's Turbo Tax site drew one million hits in January 2000 and two million in February, while H&R Block had close to half a million and one million in those months. Turbo Tax is estimated to account for roughly 80 percent of filers who actually prepared their returns on web sites.¹⁸³ Intuit is also a leader in personal tax software, which is often used for electronic filing: For example, roughly one in five tax returns were prepared with a TurboTax product for the 1998-1999 filing season.

Intuit also offers a service, the "Quicken Tax Freedom Project," in which use of the company's on-line Turbo Tax web-based product (www.turbotax.com) is provided free to taxpayers preparing and filing 1040EZ return.¹⁸⁴ The Project also offers free Federal and state return preparation and filings for families and individuals with less than \$20,000 in Adjusted Gross Income filing traditional 1040 returns. For other customers, Intuit charges \$9.95 per return (either Federal or State) for web-based electronic tax preparation. Intuit's software also enables taxpayers to transfer information from their Quicken personal financial management software into their Turbo Tax income tax returns, and guarantees the accuracy of return information.¹⁸⁵

Intuit is also planning to introduce, within a few years, a fully automated tax return service.

Under such a service, a financial vendor such as Intuit would be able, at a taxpayer's discretion,

¹⁸³ *Business Week*, April 17, 2000, pages 200-202.

¹⁸⁴ Taxpayers were eligible to file a 1040EZ for the 1999 tax year if they (1) were single or married filing jointly; (2) claimed no dependents; (3) did not claim a student loan interest deduction or educational credit; (4) were under age 65 and not blind; (5) had taxable income of less than \$20,000; (6) had income only from wages, salaries, tips, unemployment compensation, taxable scholarships and fellowships, Alaska Permanent Fund dividends, and taxable interest income not exceeding \$400; (7) did not receive advance earned income credit payments; and (8) owed no household employment taxes on wages paid to a household employee.

¹⁸⁵ Turbo Tax will pay any penalties plus interest if the defect is due to a calculation error in the program.

to collect electronically most of the data needed to prepare a tax return (from employers, banks, and brokers) and automatically prepare a pro-forma return for the taxpayer. The taxpayer could then review, modify, and approve the return.

H&R Block also brings substantial tax preparation experience to on-line tax preparation. H&R Block is a diversified company providing a wide range of financial products and services through its tax office network and Web site. During tax season 2000, H&R Block served 16.9 million taxpayers and generated \$1.4 billion in revenues through its 9,210 U.S. offices. That accounts for the company filing one out of every seven returns processed by the IRS in 2000. In addition, the company processed nearly one-half of all electronically filed returns accepted by the IRS this past tax season.

The H&R Block Web site (www.hrblock.com) includes both an online tax preparation program and tax preparation software that can be downloaded. Taxpayers who fill out a 1040EZ return can prepare and file for free through hrblock.com. All other taxpayers pay \$9.95 to file a federal return and \$4.95 for a state return. The Web site also offers taxpayers the option of getting an Electronic Refund Advance of up to \$5,000 (for a \$19.95 fee).

Other sites for on-line tax preparation include Preptax.com (www.preptax.com), Etax Corporation (www.tax1.com), H.D. Vest Technology Services (www.hdvest.com), freetaxprep.com (www.freetaxprep.com), and others.¹⁸⁶ Table 3 below shows the prices charged for on-line Federal and state filing by different providers; some of the price differences in the table reflect different service levels (e.g., live call-in assistance).

Table 3: Selective on-line filing services

	<i>On-line filing charge for 1040 Federal return</i>	<i>On-line filing charge for state return</i>
Intuit's TurboTax	\$9.95*	\$9.95*
H&R Block	\$9.95*	\$4.95*
Preptax.com	\$14.95**	**
Etax's Tax1	\$7.95	Not available
HD Vest	Free	Free
freetaxprep.com***	Free***	Free***

* No charge for taxpayers preparing and filing form 1040EZ. Intuit's site also offers free returns for individuals with less than \$20,000 in Adjusted Gross Income, regardless of 1040EZ eligibility.

** Includes state return

*** Effective tax year 2000

The Internal Revenue Service

Between the beginning of this year and tax filing day, the IRS web site recorded 968 million hits, making it one of the most frequently visited sites on the World Wide Web.¹⁸⁷ The web site allows taxpayers to download and retrieve tax publications and forms. For example, the site includes a 53-page form that provides detailed information on all aspects of the 1040 form, including worksheet spaces for necessary computations.¹⁸⁸ The IRS does not, however, allow consumers to prepare tax returns directly on its web site. Instead, the IRS simply points customers to an authorized provider, such as those firms mentioned above.¹⁸⁹

Evaluating the IRS role in on-line tax preparation services

¹⁸⁶ For a complete list of on-line filing software companies, see http://www.irs.gov/elec_svs/company.html

¹⁸⁷ Internal Revenue Service, "Electronic Transactions Set Records in Successful IRS Tax Season," April 26, 2000.

¹⁸⁸ <ftp.fedworld.gov/pub/irs-pdf/i1040gi.pdf>

¹⁸⁹ The IRS allows for certain filers to file over the telephone. To file via the telephone, a taxpayer must receive a TeleFile tax package from the IRS in the mail and plan on filing a 1040EZ. TeleFiler's must also have no dependents, have interest income of less than \$400, be under the age of 65, and have a total taxable income of less than \$50,000. The TeleFiler can pay any tax liability with a credit or debit card, or can mail a check to an IRS processing center. Additional information on the TeleFile program is available at http://www.irs.gov/elec_svs/telefile.html

In the IRS Restructuring and Reform Act of 1998, Congress outlined a series of ambitious goals for the agency with regard to electronic filing. Specifically, Congress stated that the IRS should cooperate with the private sector to expand competition and increase electronic filings, so that by 2007 at least 80 percent of all tax returns would be filed electronically. The legislation creates an Electronic Commerce Advisory Group to help the IRS fulfill this goal.

Delineating the proper role for the IRS in an electronic age involves difficult trade-offs. Our focus here is whether the IRS should provide on-line tax preparation service directly on its own web site. It should be emphasized that the IRS itself has not endorsed such a proposal, and is not officially planning its own tax preparation software. Nonetheless, some industry experts believe that the IRS is currently considering such a proposal.

The wealth of information on the IRS web site is one reason that it is so frequently visited. Providing clear and concise information, along with detailed explanations for those who require them, is consistent with Principle 1 (providing public data and information is a proper governmental role). The IRS should therefore continue to provide information and data on-line.

The legislatively mandated goal of promoting electronic filing is also consistent with Principle 2 (improving the efficiency with which governmental services are provided is a proper governmental role). Over time, electronic filing is expected to become significantly less costly for the IRS than paper filing. According to *Business Week*, "In 1999, e-returns cost \$4.14 to process, compared to \$4.28 for paper. But as more e-filers spread out the costs of filing on-line,

the IRS expects this to drop to less than \$2.00 per form in 2007.”¹⁹⁰ The cost differential may be even more substantial once differential “downstream” costs, such as those involving audits, are included.

The crux of this case study, however, involves more complicated issues than whether the IRS should be providing information on-line or promoting electronic filing. The key question is whether the IRS should be providing its own on-line tax preparation software. Evaluating that question involves tradeoffs among various principles. For example, from one perspective, providing on-line filing services is merely improving the efficiency with which governmental services are provided – it makes tax filing easier than it currently is.

The tax preparation itself, however, may represent significant value, as evidenced by the existing and extensive industry of tax attorneys and preparers to help taxpayers with individualized tax guidance. Allowing the IRS to provide on-line tax preparation services may therefore conflict with Principle 4 (the government should exercise caution in adding specialized value to public data and information). Given the number of private-sector firms already providing on-line filing, furthermore, an IRS on-line service may also conflict with Principle 10 (the government should exercise substantial caution in entering markets in which private-sector firms are active).

In addition, tax preparation involves sensitive financial information. An IRS on-line tax preparation service could therefore conflict with Principle 12 (the government should only be allowed to provide goods or services for which appropriate privacy and conflict-of-interest protections have been erected). In particular, the IRS’s legitimate interest in ensuring revenue

¹⁹⁰ Susan Straight, “As Tax Filers Go Electronic, Will the Post Office Go Hungry?” *Business Week*, April 14, 2000.

collection may conflict with legal tax avoidance activities by taxpayers. For example, would putative IRS tax preparation software ensure that taxpayers were aware of all possible (legal) deductions available to them? Would it record whether a taxpayer used an “override” option to circumvent the pre-programmed algorithm in certain circumstances? What happens when a taxpayer using IRS software is later audited and/or prosecuted by the IRS? Is there an inherent conflict between the “preparer” and “enforcer” roles that the IRS would be assuming?

More broadly, Principle 6 states that the government should not directly provide a service on-line if private provision with regulation or appropriate taxation would be more efficient. On-line tax preparation seems amenable to private provision with appropriate regulation, especially since the IRS is in the midst of a crucial and substantial computer modernization program that absorbs significant technical resources.¹⁹¹

The existence of private providers, the potential efficiencies gained by regulation or subsidization, the privacy concerns that could arise if the Internal Revenue Service provided on-line tax preparation software directly, the high opportunity costs of diverting technical IRS resources away from its computer modernization effort, and the value-added that such software represents for many returns all raise substantial questions about the merit of direct IRS provision of such software.

¹⁹¹ Creating IRS on-line tax preparation software could divert resources away from this core modernization effort. For a brief discussion of IRS efforts to improve its information technology systems, see David C. Williams, Treasury Inspector General For Tax Administration, “Progress and Problems in Implementing the Internal Revenue Service Restructuring and Reform Act Of 1998,” Joint Hearing before Committees of the United States Senate and House of Representatives, May 3, 2000.

At the same time, however, there is a legitimate public policy interest in ensuring that low-income taxpayers have access to subsidized tax preparation services. The public policy objective of ensuring subsidized access to tax preparation services need not be met, however, through direct government provision.¹⁹² Indeed, private firms are already providing subsidized access to on-line tax preparation services.¹⁹³ Therefore, given the economies of scale in producing software, and the privacy protections and other limitations that would have to be placed on direct government provision even for the simplest returns, it seems difficult to justify the direct provision of on-line tax preparation services by the IRS at this time.¹⁹⁴ In other words, applying the principles delineated in this report suggests that the IRS should not provide direct on-line tax preparation services, even if private firms were not already providing subsidized access to low-income taxpayers. Instead, the government should combine private provision with appropriate subsidies for low-income families.

¹⁹² In its Fiscal Year 2001 Budget, the Clinton Administration proposed a temporary, refundable tax credit of \$10 for non-TeleFiler electronic filers and \$5 for TeleFilers. Although this proposal does not appear to be politically viable at this time, it does demonstrate one type of policy through which the government can ensure subsidized access to on-line tax preparation services without providing such services directly.

¹⁹³ Both Intuit and H&R Block, as mentioned above, already provide free on-line tax preparation and filing to those filing Form 1040EZ, and Intuit also provides free filing to anyone with Adjusted Gross Income below \$20,000. Intuit processed roughly 700,000 returns this year at no cost to the taxpayer, while H&R Block expects several hundred thousand taxpayers to use its free service next year. Furthermore, two providers – HD Vest and freetaxprep.com – provide free web-based tax preparation and filing to taxpayers of any income (freetaxprep.com's services will be operational for next year's filing season).

¹⁹⁴ Another proposal that has been discussed is to allow relaxed privacy protections to private providers in exchange for no-cost on-line tax preparation and filing services. Again, it is important to emphasize that the IRS has not proposed such a relaxation. Nonetheless, such a proposal would contradict the principles delineated above.

Case Study: Fee-Based Search Engine Service from The National Technical Information Service

On May 17, 1999, the National Technical Information Service (NTIS) – a small agency within the Department of Commerce – announced a joint partnership with Northern Light Technology, a privately held search engine company in Cambridge, Massachusetts. The goal of this partnership was to provide a fee-based Internet search engine to access documents spread across more than 20,000 Federal government web sites.

Several hours after the announcement, the Department of Commerce “abruptly put it on hold pending a review of whether it complies with federal policy on public access to government documents.”¹⁹⁵ Administration officials were concerned that the subscription fee associated with the search engine service was inconsistent with OMB Circular A-130, which states that agencies should “set user charges for information dissemination products at a level to recover the cost of dissemination but no higher.”

The purpose of this case study is to examine whether providing a fee-based search engine service is consistent with the principles delineated above.¹⁹⁶

¹⁹⁵ Leslie Walker, “Commerce Dept. Shuts Web Site Over Fee Issue,” *Washington Post*, May 18, 1999, page E03.

The National Technical Information Service

NTIS was created in 1950 to serve as a clearinghouse for the collection and dissemination of government scientific, technical, and engineering information. In creating NTIS, Congress directed it to be self-sustaining to the fullest extent possible. While NTIS charged customers for documents in its clearinghouse, it also received an appropriation from Congress until late 1980s.

In the 1980s, the Reagan Administration proposed privatizing NTIS.¹⁹⁷ While these efforts were ultimately unsuccessful, they did focus Congressional attention on the problems facing NTIS. In the end, Congress passed legislation making NTIS operate on a “self-sustaining” basis without receiving an annual appropriation. (As noted below, this case study may raise questions about the wisdom of setting up a public agency on this basis: the self-sustaining restriction may suggest that the activities of the agency need not be undertaken by the government. In addition, as we will see below, the self-sustaining restriction creates incentives for the government agency to enter new markets – even if such activity does not serve the public interest.)

As the Department of Commerce noted last fall, “the rapid growth of the Internet has fundamentally changed the way NTIS’ customers acquire and use information. Federal agencies are now able to offer their publications directly to the public over the Internet – for free.”¹⁹⁸ With customers going elsewhere to obtain access to government scientific, technical, and

¹⁹⁶ There are additional issues within NTIS that could be examined, including its provision of web services to other government entities. However, we have chosen to focus on the issue of whether the government should provide a fee-based search engine.

¹⁹⁷ In 1988, then-Secretary of Commerce C. William Verity stated, “that the private sector, rather than the Federal sector should be responsible for the operation of those programs that are commercial in nature... This privatization effort will be implemented by developing one or more contracts for private sector performance of current NTIS activities.”

¹⁹⁸ Department of Commerce, *A Report on the National Technical Information Service (NTIS)*, Fall 1999.

engineering information, NTIS lost significant revenue in its clearinghouse function: Between fiscal year 1993 and fiscal year 1998, revenue declined 18 percent, falling from \$23.7 million to \$19.4 million. The number of documents that NTIS sold also dropped dramatically, from almost 2.3 million in 1993 to 1.3 million in 1998.¹⁹⁹

Since NTIS is required by law to remain self-sustaining, the agency developed new business lines to offset the loss in clearinghouse revenue. One example provided by Robert Mallett, the Deputy Secretary of Commerce, is NTIS' production and sale of IRS tax forms on a CD-ROM.²⁰⁰ NTIS has used revenues from these new business lines to remain "self-sustaining." However, the Commerce Department's Inspector General expressed concern that these new business lines may compete with the private sector. Specifically, the Inspector General stated: "We are also concerned that in order to replace lost sales, NTIS is seeking business opportunities on the perimeter of its statutory mission, where it risks competing against private businesses."²⁰¹

In order to offset its deteriorating financial position and to more efficiently provide an important government service (searching government information), NTIS initiated a partnership with Northern Light to develop a highly efficient search engine of Federal government information. The service, www.usgovsearch.com, would allow people to simultaneously search about 3.8 million Federal government web pages, three million government research documents, and millions of articles Northern Light had collected from commercial publishers.²⁰²

¹⁹⁹ Department of Commerce, *A Report on the National Technical Information Service (NTIS)*, Fall 1999.

²⁰⁰ Testimony of Deputy Secretary of Commerce Robert Mallett Before the Senate Subcommittee on Science, Technology, and Space on the National Technical Information Service, October 21, 1999.

²⁰¹ Department of Commerce, Office of the Inspector General, *Semiannual Report to the Congress*, September 30, 1998, page 12.

²⁰² Leslie Walker, "Untangling the Web of Federal Net Sites," *The Washington Post*, May 17, 1999, page F06.

Under the plan announced on May 17, 1999, customers would be charged \$15 for a one-day pass, \$30 for monthly access, and \$250 for annual access, plus fees of \$1 to \$4 to access certain documents. In addition, the consumer would have to pay any fees associated with obtaining the document they were looking for (e.g., if the document currently costs \$15 to view through the NTIS web site, the customer would have to still pay that amount for access to the document). In other words, the fee was solely for access to this powerful search engine. Under the plan, Northern Light and NTIS would split the revenue generated by the search engine.

After reviewing NTIS' proposed joint venture with Northern Light, the Clinton Administration determined that the appropriate course of action would be for NTIS to withdraw from its partnership with Northern Light and allow the private-sector firm to administer the search engine on its own.²⁰³ Subsequently, in June 2000, President Clinton announced the creation of firstgov.gov, a free site that will allow citizens to search all on-line government documents at no charge. According to media reports, the site will be able to search 500 million documents in less than a quarter of a second, and be capable of handling at least 100 million searches per day.²⁰⁴

Evaluation

Three of our principles seem relevant for this case study (Principles 2, 10, and 11).

²⁰³ Leslie Walker, "On-line Search Service Loses U.S. Backing," *The Washington Post*, June 15, 1999, page E04. Interestingly, Northern Light maintained the same fee structure for annual and monthly subscriptions, but lowered its daily subscription from \$15 to \$5. In addition, it granted free access to public libraries and secondary schools.

²⁰⁴ Tim Ryan, "Government to Create Web Portal, Clinton Says," *Reuters*, June 24, 2000.

NTIS' effort to improve the search capability of Federal government information is entirely consistent with Principle 2 (improving the efficiency with which governmental services are provided is a proper governmental role). Since 1992, NTIS had offered a search engine of government web sites on its FedWorld.gov web site. However, this service searched only the home pages of Federal agencies and a limited number of other web pages linked to them. As described above, the usgovsearch.com search engine would have enabled individuals to search millions of Federal government web pages. Improving access to government information is clearly a proper governmental role.

Principle 10 is also relevant. A number of private-sector search engines provide access to governmental information. For example, Google (www.google.com/unclesam) and GovBot provide access to nearly as many Federal web pages as the proposed usgovsearch.com.²⁰⁵ (Both of these alternative search engine services are free.) Since a number of private-sector entities already exist, Principle 10 (the government should exercise substantial caution in entering markets in which private-sector firms are active) would suggest that the government should be careful in providing a search engine service. Nonetheless, if the government service were priced at marginal cost (i.e., effectively free), the benefits from Principle 2 would likely dominate the concerns associated with Principle 10, and such a service would appear to be beneficial.

The most important principle in this case study, however, is Principle 11, which states that the government should generally not aim to maximize net revenues or take actions that would reduce competition. Given NTIS' recent history, it seems clear that one reason NTIS decided to partner

with Northern Light was to maximize revenues. Indeed, the presence of a fee – especially one as large as proposed when the partnership was announced – suggest that NTIS was trying to maximize net revenue, which is inconsistent with Principle 11.

Principle 11 raises serious questions about whether NTIS should be a “self-sustaining” agency. The core clearinghouse function of NTIS, which entails the collection and dissemination of government scientific, technical, and engineering information, is certainly a proper government role (see Principle 1). But based on the principles described above, it would be more appropriate for Congress to appropriate funds for this public good function than to require that NTIS offset losses in the clearinghouse with other business lines.²⁰⁶

In summary, the principles for government action on-line would suggest that NTIS should seek to improve the ability of individuals to access Federal government information through more powerful search engines. However, the existence of a user fee beyond the marginal cost of providing such a service is inappropriate. Therefore, private entities should generally provide any fee-based search engine services, not the public sector. In the end, this is precisely what happened in this case.

²⁰⁵ Ray Matthews, “Northern Light Connect with NTIS,” *Econtent*, October 1, 1999.

²⁰⁶ In August 1999, the Department of Commerce proposed transferring the clearinghouse function of NTIS to the Library of Congress and shutting down the remaining operations. Congress has not acted on the Department’s proposal. Consistent with the principles in this study, a recent report from the National Commission of Libraries and Information Sciences concluded that NTIS’ operating costs should be “defrayed by appropriated funds.” See U.S. National Commission on Libraries and Information Science, “Preliminary Assessment of the Proposed Closure of the National Technical Information Service (NTIS): A Report to the President and the Congress,” March 2000, page 3.

Conclusions

The appropriate role of government in the economy is not a static concept: It must evolve as the economy does. As economic activity shifts toward information-intensive goods and services, public policy is being presented with a series of challenges, from protecting privacy to the appropriate taxation of on-line sales and jurisdictional concerns. This report has presented a set of principles and a decision tree that are intended to help public policy-makers adapt to the digital economy. The case studies have helped to illuminate the boundaries of appropriate governmental action. In some cases (e.g., the America's Job Bank), the government seems to have struck the appropriate balance among conflicting pressures. In other cases (e.g., eBillPay), the government seems to have over-stepped the boundaries that should apply to public provision of goods and services.

As part of this year's Presidential campaign, Vice President Gore and Texas Governor George W. Bush have proposed "e-government" initiatives; for example, the Vice President has called for placing nearly every government service on-line by 2003 and Governor Bush has proposed creating a \$100 million fund to support inter-agency e-government initiatives.²⁰⁷ As more agencies move toward an e-government concept, the issues explored in this report become more acute. Policy-makers, analysts, and others may disagree with some of the principles and conclusions reached in this analysis. But this report will have served its purpose if it helps to spur debate over these issues, regardless of whether all its conclusions are accepted.

²⁰⁷ Information on Vice President Gore's and Governor Bush's e-government proposals are available at www.algore.com and www.georgewbush.com, respectively.

Failing to reconsider the appropriate role of government in a digital age, and blindly applying old principles to new challenges, would be a serious mistake for policy-makers to make. The difficulties of delineating principles such as those described in this report should not serve as an excuse for not tackling the policy issues facing government decision-makers. To ensure continued strong economic performance, a rigorous debate is necessary over how the role of government should evolve in an increasingly information-driven economy.

Biographical Information

Dr. Joseph Stiglitz is Professor of Economics at Stanford University, and also serves as Senior Director and Chairman of the Advisory Committee at Sebago Associates, Inc. Previously, Dr. Stiglitz served as the World Bank's Chief Economist and Senior Vice President for Development Economics. Before joining the Bank, he was the Chairman of the President's Council of Economic Advisers. He has also served as a professor of economics at Princeton, Yale, and All Souls College, Oxford. As an academic, Dr. Stiglitz helped create a new branch of economics – "The Economics of Information" – which has received widespread application throughout economics. In the late 1970s and early 1980s, Dr. Stiglitz helped revive interest in the economics of technical change and other factors that contribute to long-run increases in productivity and living standards. Dr. Stiglitz is also a leading scholar of the economics of the public sector. The *Economist* magazine recently stated that Dr. Stiglitz's "brilliant work on the economics of information assures him a Nobel prize." [12/18/99] In 1979, the American Economic Association awarded Mr. Stiglitz its biennial John Bates Clark Award, given to the economist under 40 who has made the most significant contributions to economics.

Dr. Peter Orszag is President of Sebago Associates, Inc., and a lecturer in economics at the University of California, Berkeley. Prior to founding Sebago Associates, he served as Special Assistant to the President for Economic Policy at the White House, where his portfolio included Social Security, climate change, electricity restructuring, personal bankruptcy reform, and a variety of other economic policy issues. He has also served as an economic adviser to the Russian Government, and as Senior Economist and Senior Adviser on the President's Council of Economic Advisers. He graduated *summa cum laude* from Princeton University, where he was elected to Phi Beta Kappa, and obtained a M.Sc. and a Ph.D. in economics from the London School of Economics, which he attended as a Marshall Scholar. In describing Dr. Orszag, President Clinton's top economic adviser noted that "On the most complicated and technical areas I've had to deal with, he's the key person I turn to over and over again." [National Journal, 5/2/98.]

Jonathan Orszag is the Managing Director of Sebago Associates, Inc. Prior to joining Sebago Associates, Mr. Orszag served as the Assistant to the Secretary of Commerce and Director of the Office of Policy and Strategic Planning. In this capacity, Mr. Orszag was the Secretary of Commerce's chief policy adviser, responsible for coordinating the development and implementation of policy initiatives within the Department. He worked on a number of projects, including telecommunications issues, e-commerce, broadband deployment, and the "digital divide." Mr. Orszag previously served as an Economic Policy Advisor on President Clinton's National Economic Council (NEC) and as an economic aide to the Secretary of Labor. He received a M.Sc. in Economic and Social History from Oxford University, which he attended as a Marshall Scholar. He received his A.B. *summa cum laude* from Princeton University, was elected to Phi Beta Kappa, and was named a *USA Today* Academic All-American.

Appendix A: Circular A-76

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

CIRCULAR NO. A-76 (REVISED 1999)

August 4, 1983

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Performance of Commercial Activities

1. **Purpose.** This Circular establishes Federal policy regarding the performance of commercial activities and implements the statutory requirements of the Federal Activities Inventory Reform Act of 1998, Public Law 105-270. The Supplement to this Circular sets forth the procedures for determining whether commercial activities should be performed under contract with commercial sources or in-house using Government facilities and personnel.
2. **Rescission.** OMB Circular No. A-76 (Revised), dated March 29, 1979; and Transmittal Memoranda 1 through 14 and 16 through 18.
3. **Authority.** The Budget and Accounting Act of 1921 (31 U.S.C. 1 *et seq.*), The Office of Federal Procurement Policy Act Amendments of 1979. (41 U.S.C. 401 *et seq.*), and The Federal Activities Inventory Reform Act of 1998. (P. L. 105-270).
4. **Background.**
 - a. In the process of governing, the Government should not compete with its citizens. The competitive enterprise system, characterized by individual freedom and initiative, is the primary source of national economic strength. In recognition of this principle, it has been and continues to be the general policy of the Government to rely on commercial sources to supply the products and services the Government needs.
 - b. This national policy was promulgated through Bureau of the Budget Bulletins issued in 1955, 1957 and 1960. OMB Circular No. A-76 was issued in 1966. The Circular was previously revised in 1967, 1979, and 1983. The Supplement (Revised Supplemental Handbook) was previously revised in March 1996 (Transmittal Memorandum 15).
5. **Policy.** It is the policy of the United States Government to:
 - a. *Achieve Economy and Enhance Productivity.* Competition enhances quality, economy, and productivity. Whenever commercial sector performance of a Government operated commercial activity is permissible, in accordance with this Circular and its Supplement, comparison of the cost of contracting and the cost of in-house performance shall be performed to determine who will do the work.

When conducting cost comparisons, agencies must ensure that all costs are considered and that these costs are realistic and fair.

- b. *Retain Governmental Functions In-House.* Certain functions are inherently Governmental in nature, being so intimately related to the public interest as to mandate performance only by Federal employees. These functions are not in competition with the commercial sector. Therefore, these functions shall be performed by Government employees.
- c. *Rely on the Commercial Sector.* The Federal Government shall rely on commercially available sources to provide commercial products and services. In accordance with the provisions of this Circular and its Supplement, the Government shall not start or carry on any activity to provide a commercial product or service if the product or service can be procured more economically from a commercial source.

6. Definitions. For purposes of this Circular:

- a. A *commercial activity* is one which is operated by a Federal executive agency and which provides a product or service that could be obtained from a commercial source. Activities that meet the definition of an inherently Governmental function provided below are not commercial activities. A representative list of commercial activities is provided in Attachment A. A commercial activity also may be part of an organization or a type of work that is separable from other functions or activities and is suitable for performance by contract.
- b. A *conversion to contract* is the changeover of an activity from Government performance to performance under contract by a commercial source.
- c. A *conversion to in-house* is the changeover of an activity from performance under contract to Government performance.
- d. A *commercial source* is a business or other non-Federal activity located in the United States, its territories and possessions, the District of Columbia or the Commonwealth of Puerto Rico, which provides a commercial product or service.
- e. An *inherently Governmental function* is a function which is so intimately related to the public interest as to mandate performance by Government employees. Consistent with the definitions provided in the Federal Activities Inventory Reform Act of 1998 and OFPP Policy Letter 92-1, these functions include those activities which require either the exercise of discretion in applying Government authority or the use of value judgment in making decisions for the Government. Services or products in support of inherently Governmental functions, such as those listed in Attachment A, are commercial activities and are normally subject to this Circular. Inherently Governmental functions normally fall into two categories:

(1) The *act of governing*; i.e., the discretionary exercise of Government authority. Examples include criminal investigations, prosecutions and other judicial

functions; management of Government programs requiring value judgments, as in direction of the national defense; management and direction of the Armed Services; activities performed exclusively by military personnel who are subject to deployment in a combat, combat support or combat service support role; conduct of foreign relations; selection of program priorities; direction of Federal employees; regulation of the use of space, oceans, navigable rivers and other natural resources; direction of intelligence and counter-intelligence operations; and regulation of industry and commerce, including food and drugs.

(2) *Monetary transactions and entitlements*, such as tax collection and revenue disbursements; control of the Treasury accounts and money supply; and the administration of public trusts.

f. A *cost comparison* is the process of developing an estimate of the cost of Government performance of a commercial activity and comparing it, in accordance with the requirements of the Supplement, to the cost to the Government for contract performance of the activity.

g. *Directly affected parties* are Federal employees and their representative organizations and bidders or offerors on the instant solicitation.

h. *Interested parties* for purposes of challenging the contents of an agency's Commercial Activities Inventory under the Federal Activities Inventory Reform Act of 1998 are:

(1) A private sector source that (A) is an actual or prospective offeror for any contract or other form of agreement to perform the activity; and (B) has a direct economic interest in performing the activity that would be adversely affected by a determination not to procure the performance of the activity from a private sector source.

(2) A representative of any business or professional association that includes within its membership private sector sources referred to in (1) above.

(3) An officer or employee of an organization within an executive agency that is an actual or prospective offeror to perform the activity.

(4) The head of any labor organization referred to in section 7103(a) (4) of Title 5, United States Code that includes within its membership officers or employees of an organization referred to in (3) above.

7. Scope.

a. Unless otherwise provided by law, this Circular and its Supplement shall apply to all executive agencies and shall provide administrative direction to heads of agencies.

b. This Circular and its Supplement apply to printing and binding only in those agencies or departments which are exempted by law from the provisions of Title 44 of the U.S. Code.

c. This Circular and its Supplement shall not:

- (1) Be applicable when contrary to law, Executive Orders, or any treaty or international agreement;
- (2) Apply to inherently Governmental functions as defined in paragraph 6.e.;
- (3) Apply to the Department of Defense in times of a declared war or military mobilization;
- (4) Provide authority to enter into contracts;
- (5) Authorize contracts which establish an employer-employee relationship between the Government and contractor employees. An employer-employee relationship involves close, continual supervision of individual contractor employees by Government employees, as distinguished from general oversight of contractor operations. However, limited and necessary interaction between Government employees and contractor employees, particularly during the transition period of conversion to contract, does not establish an employer-employee relationship.
- (6) Be used to justify conversion to contract solely to avoid personnel ceilings or salary limitations;
- (7) Apply to the conduct of research and development. However, severable in-house commercial activities in support of research and development, such as those listed in Attachment A, are normally subject to this Circular and its Supplement; or
- (8) Establish and shall not be construed to create any substantive or procedural basis for anyone to challenge any agency action or inaction on the basis that such action or inaction was not in accordance with this Circular, except as specifically set forth in Part 1, Chapter 3, paragraph K of the Supplement, "Appeals of Cost Comparison Decisions" and as set forth in Appendix 2, Paragraph G, consistent with Section 3 of the Federal Activities Inventory Reform Act of 1998.

d. The requirements of the Federal Activities Inventory Reform Act of 1998 apply to the following executive agencies:

- (1) an executive department named in 5 USC 101,
- (2) a military department named in 5 USC 102, and
- (3) an independent establishment as defined in 5 USC 104.

e. The requirements of the Federal Activities Inventory Reform Act of 1998 do not apply to the following entities or activities:

- (1) the General Accounting Office,
- (2) a Government corporation or a Government controlled corporation as defined in 5 USC 103,
- (3) a non-appropriated funds instrumentality if all of its employees are referred to in 5 USC 2105(c), or
- (4) Depot-level maintenance and repair of the Department of Defense as defined in 10 USC 2460.

8. **Government Performance of a Commercial Activity.** Government performance of a commercial activity is authorized under any of the following conditions:

- a. *No Satisfactory Commercial Source Available.* Either no commercial source is capable of providing the needed product or service, or use of such a source would cause unacceptable delay or disruption of an essential program. Findings shall be supported as follows:

(1) If the finding is that no commercial source is capable of providing the needed product or service, the efforts made to find commercial sources must be documented and made available to the public upon request. These efforts shall include, in addition to consideration of preferential procurement programs (see Part I, Chapter 1, paragraph C of the Supplement) at least three notices describing the requirement in the *Commerce Business Daily* over a 90-day period or, in cases of *bona fide* urgency, two notices over a 30-day period. Specifications and requirements in the solicitation shall not be unduly restrictive and shall not exceed those required of in-house Government personnel or operations.

(2) If the finding is that a commercial source would cause unacceptable delay or disruption of an agency program, a written explanation, approved by the assistant secretary or designee in paragraph 9.a. of the Circular, must show the specific impact on an agency mission in terms of cost and performance. Urgency alone is not adequate reason to continue in-house operation of a commercial activity. Temporary disruption resulting from conversion to contract is not sufficient support for such a finding, nor is the possibility of a strike by contract employees. If the commercial activity has ever been performed by contract, an explanation of how the instant circumstances differ must be documented. These decisions must be made available to the public upon request.

(3) Activities may not be justified for in-house performance solely on the basis that the activity involves or supports a classified program or the activity is required to perform an agency's basic mission.

b. *National Defense.*

(1) The Secretary of Defense shall establish criteria for determining when Government performance of a commercial activity is required for national defense reasons. Such criteria shall be furnished to OMB, upon request.

(2) Only the Secretary of Defense or his designee has the authority to exempt commercial activities for national defense reasons.

c. *Patient Care.* Commercial activities performed at hospitals operated by the Government shall be retained in-house if the agency head, in consultation with the agency's chief medical director, determines that in-house performance would be in the best interests of direct patient care.

d. *Lower cost.* Government performance of a commercial activity is authorized if a cost comparison prepared in accordance with the Supplement demonstrates that the Government is operating or can operate the activity on an ongoing basis at an estimated lower cost than a qualified commercial source.

9. **Action Requirements.** To ensure that the provisions of this Circular and its Supplement are followed, each agency head shall:

a. Designate an official at the assistant secretary or equivalent level and officials at a comparable level in major component organizations to have responsibility for implementation of this Circular and its Supplement within the agency.

b. Establish one or more offices as central points of contact to carry out implementation. These offices shall have access to all documents and data pertinent to actions taken under

the Circular and its Supplement and will respond in a timely manner to all requests concerning inventories, schedules, reviews, results of cost comparisons and cost comparison data.

- c. Be guided by Federal Acquisition Regulation (FAR) Subpart 24.2 (Freedom of Information Act) in considering requests for information.
- d. Implement this Circular and its Supplement with a minimum of internal instructions. Cost comparisons shall not be delayed pending issuance of such instructions.
- e. Ensure the reviews of all existing in-house commercial activities are completed within a reasonable time in accordance with the Federal Activities Inventory Reform Act of 1998 and the Supplement.

10. **Annual Reporting Requirement.** As required by the Federal Activities Inventory Reform Act of 1998 and Appendix 2 of the Supplement, no later than June 30 of each year, agencies shall submit to OMB a Commercial Activities Inventory and any supplemental information requested by OMB. After review and consultation by OMB, agencies will transmit a copy of the Commercial Activities Inventory to Congress and make the contents of the Inventory available to the public. Agencies will follow the process provided in the Supplement for interested parties to challenge (and appeal) the contents of the inventory.

11. **OMB Responsibility and Contact Point.** All questions or inquiries should be submitted to the Office of Management and Budget, Room 6002 NEOB, Washington, DC 20503. Telephone number (202) 395-6104, FAX (202) 395-7230.

12. **Effective Date.** This Circular and the changes to its Supplement are effective immediately.

Attachment A
OMB Circular No. A-76

EXAMPLES OF COMMERCIAL ACTIVITIES

Audiovisual Products and Services

- Photography (still, movie, aerial, etc.)
- Photographic processing (developing, printing, enlarging, etc.)
- Film and videotape production (script writing, direction, animation, editing, acting, etc.)
- Microfilming and other microforms
- Art and graphics services
- Distribution of audiovisual materials
- Reproduction and duplication of audiovisual products
- Audiovisual facility management and operation
- Maintenance of audiovisual equipment

Automatic Data Processing

- ADP services - batch processing, time-sharing, facility management, etc.
- Programming and systems analysis, design, development, and simulation
- Key punching, data entry, transmission, and teleprocessing services
- Systems engineering and installation
- Equipment installation, operation, and maintenance

Food Services

- Operation of cafeterias, mess halls, kitchens, bakeries, dairies, and commissaries
- Vending machines
- Ice and water

Health Services

- Surgical, medical, dental, and psychiatric care
- Hospitalization, outpatient, and nursing care
- Physical examinations
- Eye and hearing examinations and manufacturing and fitting glasses and hearing aids
- Medical and dental laboratories
- Dispensaries
- Preventive medicine
- Dietary services
- Veterinary services

Industrial Shops and Services

- Machine, carpentry, electrical, plumbing, painting, and other shops
- Industrial gas production and recharging
- Equipment and instrument fabrication, repair and calibration
- Plumbing, heating, electrical, and air conditioning services, including repair
- Fire protection and prevention services
- Custodial and janitorial services
- Refuse collection and processing

Maintenance, Overhaul, Repair, and Testing

- Aircraft and aircraft components
- Ships, boats, and components
- Motor vehicles

- Combat vehicles
- Railway systems
- Electronic equipment and systems
- Weapons and weapon systems
- Medical and dental equipment
- Office furniture and equipment
- Industrial plant equipment
- Photographic equipment
- Space systems

Management Support Services

- Advertising and public relations services
- Financial and payroll services
- Debt collection

Manufacturing, Fabrication, Processing, Testing, and Packaging

- Ordnance equipment
- Clothing and fabric products
- Liquid, gaseous, and chemical products
- Lumber products
- Communications and electronics equipment
- Rubber and plastic products
- Optical and related products
- Sheet metal and foundry products
- Machined products
- Construction materials
- Test and instrumentation equipment

Office and Administrative Services

- Library operations
- Stenographic recording and transcribing
- Word processing/data entry/typing services
- Mail/messenger
- Translation
- Management information systems, products and distribution
- Financial auditing and services
- Compliance auditing
- Court reporting
- Material management
- Supply services

Other Services

- Laundry and dry cleaning
- Mapping and charting
- Architect and engineer services
- Geological surveys
- Cataloging
- Training – academic, technical, vocational, and specialized Operation of utility systems (power, gas, water steam, and sewage)
- Laboratory testing services

Printing and Reproduction

Facility management and operation

Printing and binding – where the agency or department is exempted from the provisions of Title 44 of the U.S. Code

Reproduction, copying, and duplication

Blueprinting

Real Property

Design, engineering, construction, modification, repair, and maintenance of buildings and structures; building mechanical and electrical equipment and systems; elevators; escalators; moving walks

Construction, alteration, repair, and maintenance of roads and other surfaced areas

Landscaping, drainage, mowing and care of grounds

Dredging of waterways

Security

Guard and protective services

Systems engineering, installation, and maintenance of security systems and individual privacy systems

Forensic laboratories

Special Studies and Analyses

Cost benefit analyses

Statistical analyses

Scientific data studies

Regulatory studies

Defense, education, energy studies

Legal/litigation studies

Management studies

Systems Engineering, Installation, Operation, Maintenance, and Testing

Communications systems - voice, message, data, radio, wire, microwave, and satellite

Missile ranges

Satellite tracking and data acquisition

Radar detection and tracking

Television systems - studio and transmission equipment, distribution systems, receivers, antennas, etc.

Recreational areas

Bulk storage facilities

Transportation

Operation of motor pools

Bus service

Vehicle operation and maintenance

Air, water, and land transportation of people and things

Trucking and hauling